April 25, 1983

Mr. George A. Fisher
Clerk, U.S. Court of Appeals
for the District of Columbia Circuit
U.S. Courthouse
Third & Constitution Aves. N.W.
Washington, D.C. 20001

RE: Hobson vs. Wilson
D.C. Cir. No. 82-2159

Dear Mr. Fisher:

Enclosed for filing please find a change of address for me from Norway, Maine to New York City. This change is effective immediately.

Thank you.

Sincerely yours,

Anne Pilsbury

Enc.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JULIUS HOBSON, et al., Plaintiffs/Appellees vs. JERRY V. WILSON, et al., Defendants/Appellants	D.C.Cir. No.82-2159 and consolidated cases 82-2160, 82-2221, 82-2226 and 82-2227

NOTICE OF CHANGE OF ADDRESS

Please note a change of address for Anne Pilsbury, counsel for appellees/cross-appellants, as follows:

Anne Pilsbury, Esq.
P.O. Box 362
New York, New York
10009

Addresses for all other appellants counsel remain the same.

Anne Pilsbury
P.O. Box 362
New York, N.Y.
10009
212-473-4052

CERTFICIATE OF SERVICE

I hereby certify that I have mailed a copy of the foregoing change of address to Marc Johnston, Attorney, Appellate Staff, Dept. of Justice, 10th & Penna. Ave. N.W. 20530 and to Richard B. Nettler, Asst. Corporation Counsel, District Building, 14th & Penna. Ave. N.W., Washington, D.C 20004 this 25th day of April, 1983.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 82-2159

September Term, 19 82
Civil Action No. 76-01326

Julius Hobson, et al.

v.

Jerry Wilson,
Thomas J. Herlihy,
Jack Acree,
Christopher Scrapper,
Edward Jagen,
John Mahaney &
George Suter,
Appellants

United States Court of Appeals
for the District of Columbia Circuit
FILED APR 22 1983
GEORGE A. FISHER
CLERK

John B. Lavton, et al.

AND CONSOLIDATED CASE NOS. 82-2160, 82-2221, 82-2226 and 82-2227

O R D E R

The certified original record having been filed on April 13, 1983, it is

ORDERED that a briefing schedule is set as follows:

Defendants' brief	-	May 23, 1983
Plaintiffs' brief as cross-appellant	-	July 5, 1983
Defendants' reply briefs and responses to cross-appeal	-	August 8, 1983
Plaintiffs' reply to the response to their cross-appeal	-	August 23, 1983

Based upon the foregoing briefing schedule, the Clerk shall include these cases in the pool of cases to be drawn for this Court's November-December 1983 sitting period.

For The Court

GEORGE A. FISHER, CLERK

By: Daniel M. Cathey
Daniel M. Cathey
First Deputy Clerk

Received 4/26/83
HBP

Digitized by the Internet Archive
in 2025 with funding from
Digitization funded by a generous grant from the National Endowment for the Humanities.

https://archive.org/details/box54_82-2160-vol2

MAR 23 1983

VMC:DHWhite:jlm
145-12-4929

Telephone:
(202) 633-4269

Mr. James F. Davey
Clerk of Court
United States District Court
United States Courthouse
Washington, D.C. 20001

Re: Julius Hobson, et al. v. Jerry Wilson, et al., (D.D.C.) Civil Action No. 76-1326

Dear Mr. Davey:

Please find enclosed the federal defendants' trial exhibits to be submitted with the record to the Court of Appeals. In addition, also enclosed are certain documents which we have been advised could not be located in the record:

1. Receipt signed by David H. White and dated August 31, 1978;

2. Praecipe, dated February 8, 1981 [this may be the "withdrawal", dated February 11, 1981, appearing on the list of unlocated documents];

3. Order, dated November 12, 1981;

4. Note to the jury, dated December 17, 1981; and

5. Portions of the trial transcript for December 3, 17, and 18, 1981.

Sincerely,

DAVID H. WHITE
Trial Attorney
Federal Programs Branch
Civil Division

Enclosure

MAR 2 3 1983

cc: Ms. Anne Pilsbury
17 Danforth Street
Norway, Maine 04268

Mr. Richard B. Nettler
Assistant Corporation Counsel
District Building
Washington, D.C. 20004

C.A. 76-1326 HOBSON, et al. v. WILSON, et al.

EXCEPTIONS TO RECORD ON APPEAL:

Sept. 25, 1980: Reassignment

✓Jun 25, 1981: INTERROGATORIES (15th set)

✓Jun 25, 1981: REQUEST (10th)

✓Jun 25, 1981: INTERROGATORIES (14th set)

Nov 12, 1981: TRANSCRIPT OF PROCEEDINGS from 8/14/81 and 10/14/81

Nov. 18, 1981: TRANSCRIPT OF PROCEEDINGS, 8/14/81

✓ Mar. 3, 1982: TRANSCRIPT OF PROCEEDINGS, 12/3/81

Jun 1, 1982: ORDER allowing parties to file certain memoranda
Jun 1, 1982: APPENDIX
Jun 11, 1982: MOTIONS
Jun 15, 1982: MEMORANDUM of deft. William H. Webster
Jun 15, 1982: MEMORANDUM of D.C. defts.
Jun 21, 1982: LETTER
Jun 22, 1982: MEMORANDUM of deft. Webster
Jun 22, 1982: REPLY of D.C. defts.

Jun. 28, 1982: MOTION of pltfs. for hearing
Jun 30, 1982: CORRECTION
Jul 7, 1982: LETTER
Jul 8, 1982: OPPOSITION of deft. Webster
Jul 8, 1982: OPPOSITION of D.C. defts.
Jul 9, 1982: MEMORANDUM of pltfs.

Jul 22, 1982: MEMORANDUM (OBERDORFER, J.)
Jul 22, 1982: ORDER denying motion (OBERDORFER, J.)
Jul 22, 1982: ORDER amending order (OBERDORFER, J.)

Aug 2, 1982: MOTION of D.C. defts.
Aug. 2, 1982: SECOND MOTION
Aug. 20, 1982: OPPOSITION of pltfs.
Aug. 28, 1982: ORDER directing all defts. (OBERDORFER, J.)
Aug. 28, 1982: ORDER denying defts. (OBERDORFER, J.)
Aug. 31, 1982: ORDER directing pltfs. (RICHEY, J.)
Aug. 31, 1982: OPPOSITION
Sep. 3, 1982: REVISED MOTION of pltfs.

Anne Pilsbury
ATTORNEY AT LAW
17 Danforth Street - Norway, Maine 04268

TELEPHONE
207 / 743 5763

CENTER LOVELL
207 / 925-1144

November 12, 1982

Mr. George A. Fisher, Clerk
United States Court of Appeals
U.S. Courthouse
Room 5423
3rd & Constitution Ave. N.W.
Washington, D.C. 20001

Re: Hobson v. Wilson,
No. 82-2159 and 82-2160
(Consolidated)

Dear Mr. Fisher:

Enclosed for filing please find the appellees' reply to the District of Columbia appellants' opposition to our motion to dismiss as well as a motion from appellees for an extension of time within which to file the reply on the grounds that the District's opposition was delayed in reaching us.

I spoke to Mr. Cathey of your office on November 9, 1982 to let you know we would be requesting time within which to reply.

Sincerely yours,

Anne Pilsbury

Anne Pilsbury

Enc. (8)

Anne Pilsbury
ATTORNEY AT LAW
17 Danforth Street - Norway, Maine 04268

TELEPHONE
[illegible]

CENTER LOVELL
207 / 925-1144

November 12, 1982

Mr. George A. Fisher, Clerk
United States Court of Appeals
U.S. Courthouse
Room 5423
3rd & Constitution Ave. N.W.
Washington, D.C. 20001

Re: Hobson v. Wilson,
No. 82-2159 and 82-2160
(Consolidated)

Dear Mr. Fisher:

Enclosed for filing please find the appellees' reply to the District of Columbia appellants' opposition to our motion to dismiss as well as a motion from appellees for an extension of time within which to file the reply on the grounds that the District's opposition was delayed in reaching us.

I spoke to Mr. Cathey of your office on November 9, 1982 to let you know we would be requesting time within which to reply.

Sincerely yours,

Anne Pilsbury

Anne Pilsbury

Enc. (8)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs-Appellees	)	
	)	
v.	)	No. 82-2159 and 82-2160
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants-Appellants	)	
	)	

APPELLEES' REPLY TO OPPOSITION OF
DISTRICT OF COLUMBIA APPELLANTS TO MOTION TO DISMISS APPEAL

The position of the District of Columbia appellants (herein "District defendants") is as follows. They recognize the instruction found at 9 Moore's Federal Practice ¶204.12[1], (1982 ed.), that only the first or original Rule 50(b) or Rule 59(a) motion will toll the time for filing an appeal. But in an attempt to avoid the force of this teaching, they argue that Moore's is speaking only of motions made after final judgment and that since the FBI defendants' August 2nd motion was the first motion made after final judgment, it was really the first or original motion and therefore tolled the time for appeal under F.R.A.P.4(a).

There are two major problems with this position. First, nowhere in ¶204.12 does Moore's suggest that it is only post final-judgment motions that are troublesome. The phrase Moore's uses to describe the time period under discussion is "post-decisional", a term which from the context clearly embraces both judgments that are final and judgments such as the December 23rd judgment on the jury verdict in this case which will become final only after further procedural steps.

The second problem, and closely related to the first, is the suggestion in the District's memorandum in opposition that the term "judgment" as used in the Federal Rules of Civil Procedure always and only means "final judgment". (See Opposition by District of Columbia Appellants to Motion to Dismiss at 3.) They cite, incompletely, a portion of Fed.R.Civ.P.54(a) to support their theory. But a reading of the full rule shows that it envisions situations in which there will be both judgments and final judgment in the same case as, for example, the instant case where there are both multiple parties and multiple claims for relief.

Although judgment was entered on the jury verdicts on December 23, 1981, thereby fully adjudicating the plaintiffs' claims for relief for damages at law, the court had yet to rule on the plaintiffs' claims for injunctive relief and in order to avoid piecemeal appeals, Rule 54 prevents appeal until all claims have been decided (absent special certification).

Once the confusion over the terms judgment and final judgment is eliminated, the spectre the District defendants raise of parties delaying the filing of Rule 50 and Rule 59 motions until after final judgment is also eliminated. A oarty that delays until entry of final judgment in a multi-claim case to challange a jury verdict entered against him does so at his peril. Rules 50 and 59 require such motions be made within ten days of judgment, not final judgment. Given the conscious design of the Federal Rules to assure a speedy resolution once the trial phase of a case has ended, it would be completely inconsistent to read the Rules as defendants do

to allow a party to wait months to file objections to a jury verdict under Rule 50 or 59 in those cases where because of multiple claims judgment has been entered on part but not all of the case. It is further consistent with the Federal Rules' goal of achieving finality to insist that a second post-decision motion seeking the same relief as has already been denied, i.e. voiding the verdict through a motion n.o.v. or for a new trial, does not toll the time for noting an appeal under F.R.A.P.4(a).

The District defendants all but ask this Court to overrule its recent decision in American Security Bank, N.A. v. John Y. Harrison Realty, 670 F.2d 317 (D.C.Cir. 1982). They claim that it introduces an element of uncertainty into the decision of when to note an appeal because it holds that only Rule 50 or 59 motions that are "identical" to earlier Rule50/59 motions will fail to toll the time for appeal.

This is an incorrect reading of American Security Bank. Although the second motion filed in that case was described by the court as "identical" to one filed earlier, it was not this similarity of content that was the crucial factor in holding that the time had not been tolled but rather the simple fact that an earlier Rule 50/59 motion had been filed and only one such motion "of the kind enumerated in Rule 4(a)" will toll the time. Id. 321. American Security Bank correctly read introduces no complications into the appellate process and simply continues the law as stated in Moore's and in other circuits.

Defendants' efforts to undermine the holding in American Security Bank by suggesting that the cases it relied upon involved untimely second motions must also fail. In Randolph v. Randolph, 198 F.2d 856 (D.C.Cir. 1952), there

is no indication that the second motion was untimely. It was filed eleven days after the court denied the first post-decision motion and if the tenth day had been over a weekend, would have been timely. The fact that the court did not characterize it as untimely suggests that this was the case.

Wansor v. George Hantscho Company, 570 F.2d 1202 (5thCir. 1978), presents an even more awkward problem for defendants. It is true that there is dicta in note five suggesting that the second Rule 50/59 motion there was untimely, although this was not a factor in the holding. But if the motion in Wansor was untimely, then so was the FBI defendants' second motion in this case for the two cases present parallel procedural facts. In Wansor the verdict was entered against the plaintiff on March 20th; a timely motion for a new trial was filed on March 28th and denied June 4th, thereby causing final judgment to be entered. A second motion for a new trial was then filed -- just as in the instant case -- within ten days of that final judgment. The court's observation that "because this motion was filed almost 3 months after the original judgment, it obviously would not be timely" could as easily be said of the FBI defendants' second motion. Id.1206, n.5. But, again, it was not time that was the issue but the fact that the second motion was a motion to reconsider an order denying a motion "of the kind enumerated in Rule 4(a)" which caused the court to hold that the second motion failed to toll the time.

Finally, the District defendants argue that if the second motion filed in this case is not counted as a Rule 4(a) motion, this will create a bad precedent precluding trial courts from considering changes in the law and force appellate review of matters not raised below. Appellees reply to the general policy question is simply that there has to be an end to litigation at some point and any deadline carries with it the possibility of precluding lower

court review of changes in the law. But in this case the trial court did review the decision in Harlow v. Fitzgerald, ___U.S.____, 102 S.Ct.2727, 73 L.Ed2d. 396 (1982) and found that it did not effect the jury instructions. In reality all the FBI defendants' motion was seeking was a chance to be heard on an issue which the court had already decided against them. Such a motion, whether it is called a motion to reconsider or is treated as sui generis is not a motion enumerated in F.R.A.P. 4(a)

CONCLUSION

The plaintiff-appellees' position remains sound . The FBI defendants' second motion sought reconsideration of an order denying them relief from the jury verdict, relief sought through one of the motions enumerated in F.R.A.P. 4(a), and as the second such motion could not toll the time for appeal and therefore the appeals are untimely and should be dismissed.

Anne Pilsbury
ANNE PISLBURY
17 Danforth Street
Norway, Maine 04268
(207) 743-5583

Herb Semmel (AP)
HERB SEMMEL
Urban Law Institute of the
Antioch School of Law
1624 Crescent Place N.W.
Washington, D.C. 20009
(202) 265-9500

Randolph Scott-McLaughlin (AP)
RANDOLPH SCOTT-MCLAUGHLIN
Center for Constutional Rights
853 Broadway
New York, New York 10003
(212) 674-3303

Of Counsel:
ARTHUR SPITZER
A.C.L.U. Fund
600 Pennsylvania Ave. S.E.
Washington, D.C. 20003

Morton Stavis (AP)
MORTON STAVIS
Center for Constitutional Rights
853 Broadway
New York, New York 10003
(212) 674-3303

Mary Boresz Pike (AP)
MARY BORESZ PIKE
Somerstein & Pike
233 Broadway
Suite 670
New York, New York 10279
(212) 227-4530

CERTIFICATE OF SERVICE

I hereby certify that I have mailed this 12th day of November, 1982 a copy of the foregoing Appellees' Reply to Opposition of District of Columbia Appellants to Motion to Dismiss Appeal to:

Charles L. Reischel
Deputy Corporation Counsel
District Building
14th & E Sts. N.W.
Washington, D.C. 20004

Barbara Herwig
Marc Johnston
Department of Justice
Civil Division/ Appellate Staff
10th & Penna. Ave. N.W.
Washington, D.C. 20530

Anne Pilsbury
ANNE PILSBURY

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs-Appellees	)	
	)	
v.	)	No. 82-2159 and 82-2160
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants-Appellants	)	
	)	

APPELLEES' REPLY TO OPPOSITION OF
DISTRICT OF COLUMBIA APPELLANTS TO MOTION TO DISMISS APPEAL

The position of the District of Columbia appellants (herein "District defendants") is as follows. They recognize the instruction found at 9 Moore's Federal Practice ¶204.12[1], (1982 ed.), that only the first or original Rule 50(b) or Rule 59(a) motion will toll the time for filing an appeal. But in an attempt to avoid the force of this teaching, they argue that Moore's is speaking only of motions made after final judgment and that since the FBI defendants' August 2nd motion was the first motion made after final judgment, it was really the first or original motion and therefore tolled the time for appeal under F.R.A.P.4(a).

There are two major problems with this position. First, nowhere in ¶204.12 does Moore's suggest that it is only post final-judgment motions that are troublesome. The phrase Moore's uses to describe the time period under discussion is "post-decisional", a term which from the context clearly embraces both judgments that are final and judgments such as the December 23rd judgment on the jury verdict in this case which will become final only after further procedural steps.

The second problem, and closely related to the first, is the suggestion in the District's memorandum in opposition that the term "judgment" as used in the Federal Rules of Civil Procedure always and only means "final judgment". (See Opposition by District of Columbia Appellants to Motion to Dismiss at 3.) They cite, incompletely, a portion of Fed.R.Civ.P.54(a) to support their theory. But a reading of the full rule shows that it envisions situations in which there will be both judgments and final judgment in the same case as, for example, the instant case where there are both multiple parties and multiple claims for relief.

Although judgment was entered on the jury verdicts on December 23, 1981, thereby fully adjudicating the plaintiffs' claims for relief for damages at law, the court had yet to rule on the plaintiffs' claims for injunctive relief and in order to avoid piecemeal appeals, Rule 54 prevents appeal until all claims have been decided (absent special certification).

Once the confusion over the terms judgment and final judgment is eliminated, the spectre the District defendants raise of parties delaying the filing of Rule 50 and Rule 59 motions until after final judgment is also eliminated. A oarty that delays until entry of final judgment in a multi-claim case to challange a jury verdict entered against him does so at his peril. Rules 50 and 59 require such motions be made within ten days of judgment, not final judgment. Given the conscious design of the Federal Rules to assure a speedy resolution once the trial phase of a case has ended, it would be completely inconsistent to read the Rules as defendants do

to allow a party to wait months to file objections to a jury verdict under Rule 50 or 59 in those cases where because of multiple claims judgment has been entered on part but not all of the case. It is further consistent with the Federal Rules' goal of achieving finality to insist that a second post-decision motion seeking the same relief as has already been denied, i.e. voiding the verdict through a motion n.o.v. or for a new trial, does not toll the time for noting an appeal under F.R.A.P.4(a).

The District defendants all but ask this Court to overrule its recent decision in American Security Bank, N.A. v. John Y. Harrison Realty, 670 F.2d 317 (D.C.Cir. 1982). They claim that it introduces an element of uncertainty into the decision of when to note an appeal because it holds that only Rule 50 or 59 motions that are "identical" to earlier Rule50/59 motions will fail to toll the time for appeal.

This is an incorrect reading of American Security Bank. Although the second motion filed in that case was described by the court as "identical" to one filed earlier, it was not this similarity of content that was the crucial factor in holding that the time had not been tolled but rather the simple fact that an earlier Rule 50/59 motion had been filed and only one such motion "of the kind enumerated in Rule 4(a)" will toll the time. Id. 321. American Security Bank correctly read introduces no complications into the appellate process and simply continues the law as stated in Moore's and in other circuits.

Defendants' efforts to undermine the holding in American Security Bank by suggesting that the cases it relied upon involved untimely second motions must also fail. In Randolph v. Randolph, 198 F.2d 856 (D.C.Cir. 1952), there

is no indication that the second motion was untimely. It was filed eleven days after the court denied the first post-decision motion and if the tenth day had been over a weekend, would have been timely. The fact that the court did not characterize it as untimely suggests that this was the case.

Wansor v. George Hantscho Company, 570 F.2d 1202 (5thCir. 1978), presents an even more awkward problem for defendants. It is true that there is dicta in note five suggesting that the second Rule 50/59 motion there was untimely, although this was not a factor in the holding. But if the motion in Wansor was untimely, then so was the FBI defendants' second motion in this case for the two cases present parallel procedural facts. In Wansor the verdict was entered against the plaintiff on March 20th; a timely motion for a new trial was filed on March 28th and denied June 4th, thereby causing final judgment to be entered. A second motion for a new trial was then filed -- just as in the instant case -- within ten days of that final judgment. The court's observation that "because this motion was filed almost 3 months after the original judgment, it obviously would not be timely" could as easily be said of the FBI defendants' second motion. Id.1206, n.5. But, again, it was not time that was the issue but the fact that the second motion was a motion to reconsider an order denying a motion "of the kind enumerated in Rule 4(a)" which caused the court to hold that the second motion failed to toll the time.

Finally, the District defendants argue that if the second motion filed in this case is not counted as a Rule 4(a) motion, this will create a bad precedent precluding trial courts from considering changes in the law and force appellate review of matters not raised below. Appellees reply to the general policy question is simply that there has to be an end to litigation at some point and any deadline carries with it the possibility of precluding lower

court review of changes in the law. But in this case the trial court did review the decision in Harlow v. Fitzgerald, ___U.S.____, 102 S.Ct.2727, 73 L.Ed2d. 396 (1982) and found that it did not effect the jury instructions. In reality all the FBI defendants' motion was seeking was a chance to be heard on an issue which the court had already decided against them. Such a motion, whether it is called a motion to reconsider or is treated as sui generis is not a motion enumerated in F.R.A.P. 4(a)

CONCLUSION

The plaintiff-appellees' position remains sound . The FBI defendants' second motion sought reconsideration of an order denying them relief from the jury verdict, relief sought through one of the motions enumerated in F.R.A.P. 4(a), and as the second such motion could not toll the time for appeal and therefore the appeals are untimely and should be dismissed.

Anne Pilsbury
ANNE PISLBURY
17 Danforth Street
Norway, Maine 04268
(207) 743-5583

Herb Semmel (AP)
HERB SEMMEL
Urban Law Institute of the
Antioch School of Law
1624 Crescent Place N.W.
Washington, D.C. 20009
(202) 265-9500

Randolph Scott-McLaughlin (AP)
RANDOLPH SCOTT-MCLAUGHLIN
Center for Constutional Rights
853 Broadway
New York, New York 10003
(212) 674-3303

Of Counsel:
ARTHUR SPITZER
A.C.L.U. Fund
600 Pennsylvania Ave. S.E.
Washington, D.C. 20003

Morton Stavis (AP)
MORTON STAVIS
Center for Constitutional Rights
853 Broadway
New York, New York 10003
(212) 674-3303

Mary Boresz Pike (AP)
MARY BORESZ PIKE
Somerstein & Pike
233 Broadway
Suite 670
New York, New York 10279
(212) 227-4530

CERTIFICATE OF SERVICE

I hereby certify that I have mailed this 12th day of November, 1982 a copy of the foregoing Appellees' Reply to Opposition of District of Columbia Appellants to Motion to Dismiss Appeal to:

Charles L. Reischel
Deputy Corporation Counsel
District Building
14th & E Sts. N.W.
Washington, D.C. 20004

Barbara Herwig
Marc Johnston
Department of Justice
Civil Division/ Appellate Staff
10th & Penna. Ave. N.W.
Washington, D.C. 20530

Anne Pilsbury
ANNE PILSBURY

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs-Appellees	)	
	)	
v.	)	No. 82-2159 and 82-2160
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants-Appellants	)	
	)	

APPELLEES' REPLY TO OPPOSITION OF
DISTRICT OF COLUMBIA APPELLANTS TO MOTION TO DISMISS APPEAL

The position of the District of Columbia appellants (herein "District defendants") is as follows. They recognize the instruction found at 9 Moore's Federal Practice ¶204.12[1], (1982 ed.), that only the first or original Rule 50(b) or Rule 59(a) motion will toll the time for filing an appeal. But in an attempt to avoid the force of this teaching, they argue that Moore's is speaking only of motions made after final judgment and that since the FBI defendants' August 2nd motion was the first motion made after final judgment, it was really the first or original motion and therefore tolled the time for appeal under F.R.A.P.4(a).

There are two major problems with this position. First, nowhere in ¶204.12 does Moore's suggest that it is only post final-judgment motions that are troublesome. The phrase Moore's uses to describe the time period under discussion is "post-decisional", a term which from the context clearly embraces both judgments that are final and judgments such as the December 23rd judgment on the jury verdict in this case which will become final only after further procedural steps.

The second problem, and closely related to the first, is the suggestion in the District's memorandum in opposition that the term "judgment" as used in the Federal Rules of Civil Procedure always and only means "final judgment". (See Opposition by District of Columbia Appellants to Motion to Dismiss at 3.) They cite, incompletely, a portion of Fed.R.Civ.P.54(a) to support their theory. But a reading of the full rule shows that it envisions situations in which there will be both judgments and final judgment in the same case as, for example, the instant case where there are both multiple parties and multiple claims for relief.

Although judgment was entered on the jury verdicts on December 23, 1981, thereby fully adjudicating the plaintiffs' claims for relief for damages at law, the court had yet to rule on the plaintiffs' claims for injunctive relief and in order to avoid piecemeal appeals, Rule 54 prevents appeal until all claims have been decided (absent special certification).

Once the confusion over the terms judgment and final judgment is eliminated, the spectre the District defendants raise of parties delaying the filing of Rule 50 and Rule 59 motions until after final judgment is also eliminated. A oarty that delays until entry of final judgment in a multi-claim case to challange a jury verdict entered against him does so at his peril. Rules 50 and 59 require such motions be made within ten days of judgment, not final judgment. Given the conscious design of the Federal Rules to assure a speedy resolution once the trial phase of a case has ended, it would be completely inconsistent to read the Rules as defendants do

to allow a party to wait months to file objections to a jury verdict under Rule 50 or 59 in those cases where because of multiple claims judgment has been entered on part but not all of the case. It is further consistent with the Federal Rules' goal of achieving finality to insist that a second post-decision motion seeking the same relief as has already been denied, i.e. voiding the verdict through a motion n.o.v. or for a new trial, does not toll the time for noting an appeal under F.R.A.P.4(a).

The District defendants all but ask this Court to overrule its recent decision in American Security Bank, N.A. v. John Y. Harrison Realty, 670 F.2d 317 (D.C.Cir. 1982). They claim that it introduces an element of uncertainty into the decision of when to note an appeal because it holds that only Rule 50 or 59 motions that are "identical" to earlier Rule50/59 motions will fail to toll the time for appeal.

This is an incorrect reading of American Security Bank. Although the second motion filed in that case was described by the court as "identical" to one filed earlier, it was not this similarity of content that was the crucial factor in holding that the time had not been tolled but rather the simple fact that an earlier Rule 50/59 motion had been filed and only one such motion "of the kind enumerated in Rule 4(a)" will toll the time. Id. 321. American Security Bank correctly read introduces no complications into the appellate process and simply continues the law as stated in Moore's and in other circuits.

Defendants' efforts to undermine the holding in American Security Bank by suggesting that the cases it relied upon involved untimely second motions must also fail. In Randolph v. Randolph, 198 F.2d 856 (D.C.Cir. 1952), there

is no indication that the second motion was untimely. It was filed eleven days after the court denied the first post-decision motion and if the tenth day had been over a weekend, would have been timely. The fact that the court did not characterize it as untimely suggests that this was the case.

Wansor v. George Hantscho Company, 570 F.2d 1202 (5thCir. 1978), presents an even more awkward problem for defendants. It is true that there is dicta in note five suggesting that the second Rule 50/59 motion there was untimely, although this was not a factor in the holding. But if the motion in Wansor was untimely, then so was the FBI defendants' second motion in this case for the two cases present parallel procedural facts. In Wansor the verdict was entered against the plaintiff on March 20th; a timely motion for a new trial was filed on March 28th and denied June 4th, thereby causing final judgment to be entered. A second motion for a new trial was then filed -- just as in the instant case -- within ten days of that final judgment. The court's observation that "because this motion was filed almost 3 months after the original judgment, it obviously would not be timely" could as easily be said of the FBI defendants' second motion. Id.1206, n.5. But, again, it was not time that was the issue but the fact that the second motion was a motion to reconsider an order denying a motion "of the kind enumerated in Rule 4(a)" which caused the court to hold that the second motion failed to toll the time.

Finally, the District defendants argue that if the second motion filed in this case is not counted as a Rule 4(a) motion, this will create a bad precedent precluding trial courts from considering changes in the law and force appellate review of matters not raised below. Appellees reply to the general policy question is simply that there has to be an end to litigation at some point and any deadline carries with it the possibility of precluding lower

court review of changes in the law. But in this case the trial court did review the decision in Harlow v. Fitzgerald, ___U.S.____, 102 S.Ct.2727, 73 L.Ed2d. 396 (1982) and found that it did not effect the jury instructions. In reality all the FBI defendants' motion was seeking was a chance to be heard on an issue which the court had already decided against them. Such a motion, whether it is called a motion to reconsider or is treated as sui generis is not a motion enumerated in F.R.A.P. 4(a)

CONCLUSION

The plaintiff-appellees' position remains sound . The FBI defendants' second motion sought reconsideration of an order denying them relief from the jury verdict, relief sought through one of the motions enumerated in F.R.A.P. 4(a), and as the second such motion could not toll the time for appeal and therefore the appeals are untimely and should be dismissed.

Anne Pilsbury
ANNE PISLBURY
17 Danforth Street
Norway, Maine 04268
(207) 743-5583

Herb Semmel (AP)
HERB SEMMEL
Urban Law Institute of the
Antioch School of Law
1624 Crescent Place N.W.
Washington, D.C. 20009
(202) 265-9500

Randolph Scott-McLaughlin (AP)
RANDOLPH SCOTT-MCLAUGHLIN
Center for Constutional Rights
853 Broadway
New York, New York 10003
(212) 674-3303

Of Counsel:
ARTHUR SPITZER
A.C.L.U. Fund
600 Pennsylvania Ave. S.E.
Washington, D.C. 20003

Morton Stavis (AP)
MORTON STAVIS
Center for Constitutional Rights
853 Broadway
New York, New York 10003
(212) 674-3303

Mary Boresz Pike (AP)
MARY BORESZ PIKE
Somerstein & Pike
233 Broadway
Suite 670
New York, New York 10279
(212) 227-4530

CERTIFICATE OF SERVICE

I hereby certify that I have mailed this 12th day of November, 1982 a copy of the foregoing Appellees' Reply to Opposition of District of Columbia Appellants to Motion to Dismiss Appeal to:

Charles L. Reischel
Deputy Corporation Counsel
District Building
14th & E Sts. N.W.
Washington, D.C. 20004

Barbara Herwig
Marc Johnston
Department of Justice
Civil Division/ Appellate Staff
10th & Penna. Ave. N.W.
Washington, D.C. 20530

Anne Pilsbury
ANNE PILSBURY

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

RECEIVED
OCT 10 1982

JULIUS HOBSON, et al.	:	
	:	
v.	:	Nos. 82-2159, -2160
	:	
JERRY WILSON, et al.,	:	
	:	
Appellants.	:	

OPPOSITION BY DISTRICT OF COLUMBIA APPELLANTS
TO MOTION TO DISMISS APPEAL

Appellees have moved to dismiss appeals filed by individual District of Columbia defendants on September 27, 1982, and by the District on October 6, 1982, from judgments entered August 28, 1982. Appellees claim that the appeals were untimely on two related grounds. First, they argue that the federal defendants' August 2, 1982, motion for judgment n.o.v./new trial, based on a recent Supreme Court decision, could not destroy the finality of a judgment entered July 22, 1982. They claim that the motion was ineffective to destroy finality because all defendants had filed pre-judgment motions for judgment n.o.v./ new trial in January 1982 which the district court had denied on June 1, prior to judgment and more than three weeks before the Supreme Court decision on which the August 2 motion was based. Second, appellees argue that the District of Columbia appellants' time for appeal was not affected by the August 2 motion because they had not joined in it.

1. Applicable Rules and statutes.

The time for appeal is governed by Rule 4(a)(1), F.R.A.P., which allows all parties sixty days from entry of judgment to notice their

appeal if the United States or one of its officers or agencies is a party. Case law has held that the sixty-day period applies if at least one party is represented by a federal government attorney or if the federal officers are acting under color of office, law, or lawful authority. Wallace v. Chappell, 637 F. 2d 1345, 1348 (9th Cir. 1981)(en banc). Here, the federal employees were represented by the U.S. Attorney and also appear to claim to be acting under color of office or lawful authority. If, therefore, the time for appeal is calculated from the August 28 denial of the motion for judgment n.o.v./new trial, all notices of appeal are timely.[1/]

Under Rule 4(a)(4), F.R.A.P., if a party has filed a timely motion for judgment n.o.v./new trial in accordance with Rules 50(b) or 59(a), F.R. Civ. P., "the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion." An appeal noted before district court disposition of such motions "shall have no effect." Id. Under the plain words of Rule 4, therefore, the time for appeal by all parties

---

1/ The notices of appeal are also timely if appellants had the normal thirty days to notice their appeals. While the District of Columbia noticed its appeal outside the thirty-day period, it did so within fourteen days of other appellants' timely appeals. Under Rule 4(a)(3), F.R.A.P., "any party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule (4)(a), whichever period last expired." The first appeal was noticed September 28. The District of Columbia noticed its appeal nine days later.

in this case would ordinarily be deemed to run from the August 28, the date on which the federal motion was denied. Prior notices would have been ineffective.

In order to trigger the provision of Rule 4(a)(4) destroying the finality for appeal, the motions for judgment n.o.v./new trial must have been timely. A Rule 50(b) or 59(a) motion is timely if made "not later than 10 days after entry of judgment." Judgment is defined by Rule 54(a) as "a decree and any order from which an appeal lies." An appeal lies only from "final decisions." 28 U.S.C. 1291; Knable v. Wilson, 187 U.S. App.D.C. 48, 570 F. 2d 957, 961-62, n. 27 (1977).[2/] Where there are multiple parties or issues, however, Rule 54(b), F.R. Civ.P., provides no "final decision" exists until the trial court had adjudicated all claims against all parties. Until then, an "order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." In the present case, although jury verdicts had been entered against most of the defendants in December 1981, appellees' claim for injunctive relief against the director of the Federal Bureau of Investigation was not adjudicated until July 22, 1982. Until then, therefore, there was no "final decision" permitting appeal, and, hence, no "judgment." On July 22, the district court entered judgment against all parties,

---

[2/] Appeals also lie from entry or denial of an injunction or by permission. See 28 U.S.C. 1292. Neither is applicable here.

for the first time permitting appeal by any party. The federal motion was filed not later than ten days thereafter and therefore was timely under both Rule 50(b) and 59(a). Ordinarily, then, the federal motion, being timely, would have destroyed the finality of the July 22 judgment "for all parties" [Rule 4(a)(4)] until denied by the court on August 28.

2. Appellees' claim.

Although neither the appellate nor civil rules explicitly say anything arguably in support, appellees assert that, if a defendant once files, and the district court denies, a motion for judgment n.o.v./ new trial, a timely post-judgment motion by the same defendant can never invoke the provision of Rule 4(a)(4) destroying the finality of judgment. This, they apparently assert, would be true irrespective of intervening events.

Appellees' argument, if accepted, would encourage a party in miltiple-party litigation to await final judgment before asking the court to review jury verdicts in order to be certain that no subsequent event near the time of final judgment, which would provide additional grounds for setting aside the verdicts, could not be argued in support of the motion. Alternatively, a defendant who has filed a pre-judgment motion that has been denied prior to judgment would be compelled to file an immediate appeal upon entry of judgment even though he has never argued the intervening event to the trial court. The first alternative is inconsistent with the thrust of Rule 54(b) which is to allow all verdicts and orders to be revised at any

time, because of intervening developments in fact or law, until all claims before the court have been disposed of.[3/] The second alternative would force appellate consideration of matters not raised in the district court, something that appellate courts have traditionally been extremely reluctant to do. See Bast v. U.S. Department of Justice, ____U.S. App. D.C. ____, 665 F. 2d 1251, 1253 (1981); Miller v. Avirom, 127 U.S.App.D.C. 367, 384 F. 2d 319 (1967).

In the present case, the federal and District of Columbia appellants filed motions for judgment n.o.v./new trial in December 1981 which the district court denied on June 1. They did not directly address the issue of the standard governing a qualified immunity. On June 24, 1982, the Supreme Court decided Harlow v. Fitzgerald, ____U.S.____, 102 S.Ct. 2727, 73 L.Ed.2d 396. The district court entered final judgment July 22, making a footnote statement that Harlow did not affect judgment. In their August 2 motion, for the first time, the federal defendants argued that Harlow had substantially altered the law of "qualified immunity" and that it required judgment n.o.v. or a new trial. Harlow and its holding had obviously not been available when either set of appellants had made their December, 1981, motions.

3/ It is also inconsistent with post-judgment practice. As the Advisory Committee Notes to the 1979 Amendments to Rule 4 state, "it would be undesirable to proceed with the appeal while the district court had before it a motion the granting of which would vacate or alter the judgment appealed from."

Nothing in the plain words of the Rules suggests that the August 2 post-judgment motion did not destroy the finality of the July 22 judgment.

Appellees' argument evidently rests, not on the plain words of the Rules, but on a misapplication of the gloss that has been put on the Rules by Moore's Federal Practice ¶ 204[1] at 4-67 & n. 27 (1982), and by American Security Bank v. John Y. Harrison Realty, Inc., ____U.S.App.D.C.____, 670 F. 2d 317 (1982). Neither Professor Moore's concern nor American Security Bank's holding is apposite to a timely post-judgment motion that is not a mere reconsideration of a pre- or post-judgment motion already denied.

Professor Moore's concern is clearly not implicated here. In order to avoid a succession of post-judgment motions, each asking for reconsideration of the previous one and thereby arguably permitting the moving party to postpone the time for appeal indefinitely through unlimited extensions, Professor Moore, and the authorities on which he relies, urge that only the "original" post-judgment motion destroys finality. Here, of course, there was only one post-judgment motion and the appeals were noticed as soon as it was denied. The danger of indefinite postponement and of successive motions was not present. Moreover, if the ten-day time limits in Rules 50(b) and 59(a) are construed to apply to the original unaltered[4/] final judgment, as

---

4/ Of course, if the trial court grants the motion in part, there appears to be no reason why the parties should not be allowed to use all available post-judgment procedures to challenge the change.

defined in Rule 54(a), no post-judgment motion beyond the first is likely within the ten-day period, obviating all possibility of indefinite postponement.[5/]

American Security Bank is similarly inapposite, assuming it to have been correctly decided. American Security Bank simply held that a motion which does nothing but simply ask for reonsideration of a motion denied by the trial court is not itself a motion under either Rule 50(b) or Rule 59(a) that would destroy the finality of judgment. In American Security Bank appellant had moved for judgment n.o.v./new trial prior to judgment. The district court then entered judgment and, four days later, denied the motion. See 670 F. 2d at 319-20. Appellant moved for reconsideration in a motion which this Court, id. at 321, characterized as "identical" to the earlier motion. Citing cases where courts have held that motions to reconsider filed more than ten days after a Rule 54(a) judgment do not destroy finality,[6/]

5/ In fact, Professor Moore elsewhere acknowledges that multiple motions for judgment n.o.v. or for new trial served within ten days of a Rule 54(a) judgment could properly destroy finality. See 6A Moore's Federal Practice ¶ 59.13[1]-[3]; 9 Moore's Federal Practice ¶ 204.12[1] at 4-67.

6/ The Court cited Randolph v. Randolph, 91 U.S.App.D.C. 170, 198 F. 2d 956 (1952) and Wansor v. George Hantscho Co., 570 F. 2d 1202, 1206 (5th Cir. 1978). In neither case was the motion to reconsider timely under Rules 50(b) or 59(a).

this Court held that "a motion to reconsider the denial of a motion for a new trial does not operate to toll the running of the appeal period." Id. at 320. Assuming that this is a sustainable statement of the law,[7/] it has no bearing here. In the present case, the August 2 motion raised an entirely new argument based on intervening case-law. In no sense does it replicate the December, 1981, motions nor did it attempt to reargue the points made in the December motions. Thus, the August 2 motion was neither "identical" to, nor a reconsideration, of the December motions.

American Security Bank can also be read to hold that a pre-judgment motion that is denied after judgment is the equivalent to a post-judgment motion because it determines that the judgment will not be reopened. It follows that the date of denial starts the running of the time for appeal. That is the holding of the case on which American Security Bank relies. Partridge v. Presley, 88 U.S.App.D.C. 289, 189 F. 2d 645, 646 (1951)(time for appeal runs from date of post-judgment denial of pre-judgment motion for new trial, not from intervening judgment). In the present case, the pre-judgment motions were denied well before the entry of judgment and the district court's only

---

[7/] As noted, the Court's holding is not mandated by, and appears to be inconsistent with, the wording of the Rules, and to expand the decisional law on which it relies. It also introduces an undesirable extra element of uncertainty--dependent on the degree of similarity between pre-judgment and post-judgment motions-- to determinations as to when the time for appeal begins to run.

post-judgment denial of a Rule 50(b) or 59(a) motion occurred on August 28. Although the district court mentioned Harlow when it entered judgment on July 22, its actions on that day, were without benefit of the parties' arguments as to the relevance of Harlow. Its judgment can therefore not be deemed equivalent to denial of a motion when one had not yet been made.

In short, the plain words of the Rules hold the federal post-judgment motion to have been timely and to be of the type that suspends the finality of judgment. Neither Professor Moore's concern nor the holding in American Security Bank warrant an exception in this case. Accordingly, since the finality of judgment was destroyed as to "all parties" [Rule 4(a)(4), F.R.A.P.], the District of Columbia appellant's notices of appeal, filed within sixty days of disposition of the post-judgment motion, were timely.

Conclusion

The motion to dismiss should be denied.

CHARLES L. REISCHEL
Deputy Corporation Counsel, D. C.
Appellate Division

Attorney for Appellants,
Room 309, District Building
14th & Penn. Ave., N. W.
Washington, D. C. 20004
Telephone: 727-6252

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition was mailed, postage prepaid, this 3rd day of November 1982, to Anne Pilsbury, 17 Danforth Street, Norway, Maine 04268; Herbe Semmel, Antioch School of Law for the Urban Law Institute, 1624 Crescent Place, N.W., Washington, D. C. 20009, Randolph Scott-McLaughlin, Center for Constitutional Rights, 853 Broadway, New York, New York 10003, Morton Stavis, Center for Constitutional Rights, 853 Boardway, New York, New Yor 10003, Somerstein & Pike, 233 Boardway, Suite 670, New York, New York 10279, and Barbara L. Herwig, and Marc Johnston, Department of Justice, 10th Street and Constitution Avenue, N.W., Civil Division, Appellate Staff, Washington, D.C. 20530.

CHARLES L. REISCHEL
Deputy Corporation Counsel, D.C.
Appellate Division

CHARLES L. REISCHEL
Deputy Corporation Counsel, D. C.
Appellate Division

Appellate Division
GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL

OFFICIAL BUSINESS
PENALTY FOR MISUSE

...GOOD FOR ... MAILER'S ADV.

Anne Pilsbury, Esquire
17 Danforth Street
Norway, Maine 04268

United States Court of Appeals
for the District of Columbia Circuit

ENTRY OF APPEARANCE

(D.C. defendants)

No. _____

CAPTION

JULIUS HOBSON, et al.

v.

JERRY WILSON, et al.

PARTY

The Clerk will enter my appearance as counsel for:

☐ Appellant(s)
☐ Petitioner(s) _____
Name of Party

☒ Appellee(s)
☐ Respondent(s) ABE BLOOM, ARTHUR I. WASKOW, TINA HOBSON, REV. DAVID EATON, SAMUEL ABBOTT, RICHARD P. POLLOCK, REGINALD H. BOOKER, WASHINGTON PEACE C... and WASHINGTON AREA WOMEN STRIKE FOR PEACE.
Name of Party

☐ Intervenor(s) _____
Name of Party

☐ Amicus Curiae _____
Name of Party

ATTORNEY

Name Anne Pilsbury/ 17 Danforth Street, Norway, Maine 04268 Phone 207-743-...

Name Mary B. Pike / 233 Broadway, Suite 730, N.Y., N.Y. 10279 Phone 212-227-...

Name Morton Stavis Phone 212-674-...

Name Randolph Scott-McLaughlin
Firm

Address CENTER FOR CONSTITUTIONAL RIGHTS (Stavis & Scott-McLaughlin only)

853 BROADWAY / New York, N.Y. Zip Code 10003

NOTE: Must be SUBMITTED by a member of the Bar of the United States Court of Appeals for the District of Columbia Circuit.

United States Court of Appeals
for the District of Columbia Circuit

ENTRY OF APPEARANCE

No. 69-1539 (D.C. defendants)

CAPTION

JULIUS HOBSON, et al.

v.

JERRY WILSON, et al.

PARTY

The Clerk will enter my appearance as counsel for:

☐ Appellant(s)
☐ Petitioner(s) _____
Name of Party

☒ Appellee(s)
☐ Respondent(s) ABE BLOOM, ARTHUR I. WASKOW, TINA HOBSON, REV. DAVID EATON, SAMUEL ABBOTT, RICHARD P. POLLOCK, REGINALD H. BOOKER, WASHINGTON PEACE CENTER and WASHINGTON AREA WOMEN STRIKE FOR PEACE.
Name of Party

☐ Intervenor(s) _____
Name of Party

☐ Amicus Curiae _____
Name of Party

ATTORNEY

Name Anne Pilsbury/ 17 Danforth Street, Norway, Maine 04268 Phone 207-743-5583

Name Mary B. Pike / 233 Broadway, Suite 730, N.Y.,N.Y. 10279 Phone 212-227-4530

Name Morton Stavis Phone 212-674-3303

Name Randolph Scott-McLaughlin
Firm

Address CENTER FOR CONSTITUTIONAL RIGHTS (Stavis & Scott-McLaughlin only)

853 BROADWAY / New York, N.Y. Zip Code 10003

NOTE: Must be SUBMITTED by a member of the Bar of the United States Court of Appeals for the District of Columbia Circuit.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
OCT 6 1982
JAMES F. DAVEY
CLERK

JULIUS HOBSON, et al.,

Plaintiffs,

v. : Civil Action No. 76-1326

JERRY WILSON, et al.,

Defendants.

NOTICE OF APPEAL

Notice is hereby given, this 6th day of October 1982, that the District of Columbia, a defendant in the above-entitled case, appeals to the United States Court of Appeals for the District of Columbia Circuit from the (1) judgment, on the verdict of the jury in favor of plaintiffs, entered on December 23, 1981; (2) order of July 22, 1982, which, inter alia, ordered the Clerk to enter final judgment in this matter; and (3) denial of defendants Brennan, Moore, Jones, Dangburn and Grinaldi motion for judgment notwithstanding the verdict or, in the alternative, for a new trial filed on August 28, 1982.

Names and addresses of
Attorneys to be served:

Daniel M. Schember, Esq.
1712 N Street, N.W.
Washington, D.C. 20036
Attorney for Plaintiffs

David White, Esq.
Department of Justice
Washington, D.C. 20530
Attorney for Federal Defendants

JUDITH W. ROGERS,
Corporation Counsel, D.C.

CHARLES L. REISCHEL,
Deputy Corporation Counsel, D.C.
Appellate Division

RICHARD B. NETTLER,
Assistant Corporation Counsel, D.C.
Appellate Division

Attorneys for the District of Columbia
Room 309, District Building
14th & Penn. Ave., N.W.
Washington, D.C. 20004
Telephone: 727-6252

OCT 6 1982

RECEIVED SEP 2 9 1982

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
SEP 27 1982
JAMES F. DAVEY
CLERK

JULIUS HOBSON, et al.,

Plaintiffs,

v. : Civil Action No. 76-1326

JERRY WILSON, et al.,

Defendants.

NOTICE OF APPEAL

Notice is hereby given, this 27th day of September 1982, that the defendants in the above-entitled case, Jerry Wilson, Thomas J. Herlihy, Jack Acree, Christopher Scrapper, Edward Jagen, John Mahaney and George Suter, appeal to the United States Court of Appeals for the District of Columbia Circuit from the (1) judgment, on the verdict of the jury in favor of plaintiffs, entered on December 23, 1981, (2) order of July 22, 1982, which, inter alia, ordered the Clerk to enter final judgment in this matter; and (3) denial of Defendants Brennan, Moore, Jones, Dangburn and Grinaldi motion for judgment notwithstanding the verdict or, in the alternative, for new trial filed on August 28, 1982.

Names and addresses of
Attorneys to be served:

Daniel M. Schember, Esq.
1712 N Street, N. W.
Washington, D. C. 20036
Attorney for Plaintiffs

David White, Esquire
Department of Justice
Washington, D. C. 20530
Attorney for Federal Defendants

JUDITH W. ROGERS,
Corporation Counsel, D. C.

CHARLES L. REISCHEL,
Deputy Corporation Counsel, D. C.
Appellate Division

RICHARD B. NETTLER,
Assistant Corporation
Counsel, D. C.

Attorneys for Defendants Above Named
Room 309, District Building
14th & Penn. Ave., N. W.
Washington, D. C. 20004
Telephone: 727-6252